

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ZACH WESTBROOK, ON BEHALF OF HIMSELF
AND OTHERS SIMILARLY SITUATED,

Plaintiff,

v.

ADVANCED SOLIDS CONTROL, LLC,

Defendant.

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CASE NO. 2:14-cv-00131

MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

Plaintiffs request leave to amend their complaint.¹ Defendant opposes this motion. Because Plaintiffs filed this motion before the deadline for pleading amendments, Federal Rule of Civil Procedure 15(a) governs. Under Rule 15(a), leave to amend pleadings “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a); *Torch Liquidating Trust ex rel. Bridge Assocs. L.L.C. v. Stockstill*, 561 F.3d 377, 391 (5th Cir. 2009). Rule 15(a) “evinces a bias in favor of granting leave to amend.” *Goldstein v. MCI WorldCom*, 340 F.3d 238, 254 (5th Cir. 2003) (citations omitted). If the district court lacks a substantial reason to deny leave, it should grant leave to amend. *Lone Star Ladies Invest. Club v. Schlitzky's Inc.*, 238 F.3d 363, 367 (5th Cir. 2001) (denying leave to amend absent articulable reason is an abuse of discretion).

There is no reason to deny Plaintiffs’ motion for leave to amend. The Court has only recently entered a Scheduling Order in this case, and there are no significant deadlines before the end of 2015. *See* ECF No. 40. The only deadlines before 2016 require parties to exchange demand letters and file a

¹ Plaintiffs’ proposed First Amended Complaint is attached as Exhibit A. The proposed First Amended Complaint was prematurely filed at ECF No. 43. That filing was in error, and Plaintiffs request that this Motion control.

Statement of Intent Regarding Mediation. *Id.* at ¶ 4. As such, the filing of an amended complaint should not affect any deadlines in this case.

Further, the added claims under the New Mexico Minimum Wage Act (the NMMWA) arise out of the same basic facts as the current Fair Labor Standards Act (the FLSA) and have significant overlap in the elements of each cause of action.² As recognized by one Fifth Circuit court, “the NMMWA furthers the FLSA’s goals because it provides for the health and safety of the citizenry by increasing worker protections” and as such “[t]he two laws work in tandem.” *McLeland v. 1845 Oil Field Servs.*, No. SA-14-CV-1117-XR, 2015 WL 1206938, at *8 (W.D. Tex. Mar. 16, 2015).

For these reasons, Plaintiffs request that their motion for leave to amend be granted.

Respectfully submitted,

BRUCKNER BURCH PLLC

/s/ Rex Burch

By: _____

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² “In order to prevail on [an NMMWA overtime claim], Plaintiffs must show that ‘(a) they worked more than forty hours a week, (b) that [the Hospital] knew or should have known that they did so, and (c) that they were not compensated for the overtime.’” *Cruse v. St. Vincent Hosp.*, 729 F. Supp. 2d 1269, 1273 (D.N.M. 2010) (citation omitted). Similarly, “plaintiff, in order to establish a claim for unpaid overtime under the FLSA, must prove that he worked in excess of forty hours per week but that defendant failed to pay him at one and one-half times his hourly rate for all hours worked over forty.” *Eyles v. Uline, Inc.*, No. 4:08-CV-577-A, 2009 WL 2868447, at *3 (N.D. Tex. Sept. 4, 2009) aff’d, 381 F. App’x 384 (5th Cir. 2010).

CERTIFICATE OF CONFERENCE

This is to certify that on May 28, 2015, Counsel for Plaintiffs, Richard Burch, conferred with counsel for the Defendant, Michael Seale, to determine whether he agreed or opposed this motion. Mr. Seale ultimately stated that his client will win on the merits and as such, they oppose this motion.

/s/ Rex Burch

Richard J. (Rex) Burch

CERTIFICATE OF SERVICE

On May 29, 2015, I filed this document via the CM/ECF system which will send notification to all counsel of record.

/s/ Rex Burch

Richard J. (Rex) Burch